

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Viacom Stations Group of Atlanta Inc.)	Facility ID No. 6900
Licensee of WUPA(TV), Atlanta, GA)	NAL/Acct. No. 0641420014
)	FRN: 0003474871

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: December 14, 2005

Released: December 16, 2005

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Atlanta, Georgia. We find that Viacom Stations Group of Atlanta Inc., licensee of station WUPA(TV), Atlanta, Georgia, willfully and repeatedly violated Section 73.3526(e)(11)(ii) of the Commission's Rules (Rules) by failing to place in the station's public inspection file records concerning compliance with the children's programming commercial limits.¹ For the reasons set forth below, we find Viacom Stations Group of Atlanta Inc. apparently liable in the amount of four thousand dollars (\$4,000) for its violation of Section 73.3526(e)(11) (ii) of the Rules.

II. BACKGROUND

2. In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

3. Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.² As

¹ 47 C.F.R. §§ 73.3526(e)(11) (ii).

² See 47 C.F.R. § 73.3526.

set forth in Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Section 73.3526 also requires licensees to place records concerning commercial limits in the public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.³

4. On December 1, 2004, the licensee filed a license renewal application (FCC Form 303-S) for station WUPA(TV), Atlanta, Georgia (File No. BRCT-20041201ANU). In response to Section IV, Question 3 of that application, the licensee certified that, during the previous license term, station WUPA(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to that application, the licensee indicates that a recent review of its public file revealed that certifications of compliance with the children's commercial limits for the first and second quarters of 1998, and the second through the fourth quarters of 1997 were missing.

5. Moreover, in response to Section IV, Question 5 of that application, you certify that, during the previous license term, station WUPA(TV) failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19 to the renewal application, you state that station WUPA(TV) exceeded the children's television commercial limits by 15 seconds during the second quarter of 1997. You attribute the overage to a technical malfunction of the LMS cart machine that inserts all local commercials into the station's programming.

III. DISCUSSION

6. Station WUPA(TV)'s failure to place in its public inspection file records concerning compliance with the children's programming commercial limits constitutes a willful and repeated violation of Section 73.3526(e)(11) (ii). Section 503(b) of the Communications Act of 1934, as amended (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ In determining the appropriate forfeiture

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

⁴ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵

7. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ Here, the station’s public inspection file was missing required documents for five quarters during the license term. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the violation in this case.⁷

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,⁸ Viacom Stations Group of Atlanta Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for willful and repeated violations of Section 73.3526(e)(11)(ii) of the Commission’s Rules as indicated above.⁹

9. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release date of this Notice, Viacom Stations Group of Atlanta Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁵ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

⁷ It appears from the information before us the overage in question was an isolated and inadvertent violation of Section 73.670 of the Commission’s Rules and, as such, does not warrant further Commission action.

⁸ 47 C.F.R. §§ 0.283 and 1.80.

⁹ 47 C.F.R. §§ 73.3526(e)(11)(ii).

¹⁰ *See* 47 C.F.R. § 1.1914.

10. IT IS FURTHER ORDERED that, a copy of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at 2000 K Street, NW, Suite 725, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau